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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Stephen Baldwin, et al.                      Art Unit 3761  
Serial No. 10/660,319  
Filed        September 11, 2003  
Confirmation No. 5393  
For    ABSORBENT PRODUCT WITH IMPROVED LINER TREATMENT  
Examiner Catharine L. Anderson

December 18, 2006

APPEAL BRIEF

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**TABLE OF AUTHORITIES**

**REFERENCES**

West Group, <u>Manual of Patent Examining Procedure</u> , 8th Ed. Rev. Two (2004).....	10, 11, 12, 13, 14, 15
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**APPEAL BRIEF**

This is an appeal from the final rejection of the claims of the above-identified application made in the Office action dated July 26, 2006. A Notice of Appeal was submitted via electronic filing on October 17, 2006.

**I. REAL PARTY IN INTEREST**

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

**II. RELATED APPEALS AND INTERFERENCES**

Appellants are unaware of any pending appeals, which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

### **III. STATUS OF CLAIMS**

Claims 1-37 and 41 are currently pending in the application. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 1-6, 13-18, 37, and 41 stand rejected under 35 U.S.C. §102(e). The rejection of claims 1-6, 13-18, 37, and 41 under 35 U.S.C. §102(e) is being appealed.

Claims 7-12 and 19-36 stand rejected under 35 U.S.C. §103(a). The rejection of claims 7-12 and 19-36 under 35 U.S.C. §103(a) is being appealed.

Claims 1-6 and 10-18 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-14 of co-pending U.S. Patent Application No. 10/659,967. The rejection of claims 1-6 and 10-18 under the judicially-created doctrine of obviousness-type double patenting is being appealed.

### **IV. STATUS OF AMENDMENTS**

No amendments have been filed after the final rejection.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Conventional absorbent articles, such as disposable diapers and incontinence garments, typically utilize absorbent materials

located between a liquid pervious bodyside liner and a liquid impermeable outer cover to absorb body exudates. Typically, the liquid pervious bodyside liners have been constructed of nonwoven materials such as spunbond polyolefin materials. Unfortunately, such materials do not always provide a soft, non-abrasive contact surface with the skin. To prevent body exudates from contacting the wearer's skin, the caregiver often applies skin protective products directly to the skin of the wearer before positioning the article on the wearer. This procedure typically involves the caregiver applying the products to their hand and then transferring the product to the wearer's skin. To eliminate the caregiver from contacting the products and to reduce skin abrasion and improve skin heat, lotion formulations can be applied to the bodyside such that, during use, the lotion formulation either transfers to the skin or provides lubricity thereby reducing the friction between the liner and the skin.

The present invention thus relates to absorbent products such as diapers and incontinence garments comprising an improved lotion formulation on the surface thereof. The lotion formulation, which may conveniently be applied to the bodyfacing surface of the bodyside liner of the absorbent product, is stable at elevated temperatures, remains on or near the surface of the absorbent product prior to use, and readily transfers to the user's skin upon use.

In one specific embodiment, as set forth in independent claim 1, the present invention is directed to an absorbent article comprising a liner material having a bodyfacing surface.<sup>1</sup> The bodyfacing surface has deposited thereon a lotion formation

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<sup>1</sup> Specification at page 16, paragraph 39.

in an amount of from about 0.05 mg/cm<sup>2</sup> to about 100 mg/cm<sup>2</sup>. The lotion formulation comprises from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 0.1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer.<sup>2</sup> The rheology enhancer is selected from the group consisting of dextrin palmitate, dextrin palmitate ethylhexanoate, stearyl inulin, combinations of di-functional alpha-olefins and styrene alone or in combination with mineral oil or petrolatum; combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, styrene/butadiene/styrene copolymers, styrene/isoprene/styrene copolymers, styrene-ethylene/butylene-styrene copolymers, styrene-ethylene/propylene-styrene copolymers, (styrene-butadiene)<sub>n</sub> polymers, (styrene-isoprene)<sub>n</sub> polymers, styrene-butadiene polymers, polyethylene polyisobutylenes, polyisobutenes, and combinations thereof.<sup>3</sup>

In another specific embodiment, as set forth in independent claim 21, the absorbent article comprises a liner material having a bodyfacing surface, the bodyfacing surface having deposited thereon a lotion formulation in an amount of from about 0.05 mg/cm<sup>2</sup> to about 100 mg/cm<sup>2</sup> and comprising from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 1% (by

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<sup>2</sup> Specification at pages 17-18, paragraph 43; pages 20-21, paragraph 50; and page 22, paragraph 53.

<sup>3</sup> Specification at pages 21-22, paragraph 52.

total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer. The lotion formulation has a melt point viscosity of from about 5000 cPs to about 1,000,000 cPs and a process temperature viscosity of from about 50 cPs to about 50,000 cPs.<sup>4</sup> The rheology enhancer is selected from the group consisting of dextrin palmitate, dextrin palmitate ethylhexanoate, stearyl inulin, combinations of di-functional alpha-olefins and styrene alone or in combination with mineral oil and petrolatum, combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, styrene/butadiene/styrene copolymers, styrene/isoprene/styrene copolymers, styrene-ethylene/butylene-styrene copolymers, styrene-ethylene/propylene-styrene copolymers, (styrene-butadiene)<sub>n</sub> polymers, (styrene-isoprene)<sub>n</sub> polymers, styrene-butadiene polymers, polyethylene polyisobutylenes, polyisobutenes, and combinations thereof.<sup>5</sup>

In another embodiment, as claimed in independent claim 37, the absorbent article comprises a liner material having a bodyfacing surface, the bodyfacing surface having deposited thereon a lotion formulation in an amount of from about 0.05 mg/cm<sup>2</sup> to about 100 mg/cm<sup>2</sup> and comprising from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 0.1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer. The rheology enhancer is selected from the group consisting of hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated

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<sup>4</sup> Specification at page 23, paragraphs 56-57.

<sup>5</sup> Specification at pages 21-22, paragraph 52.



polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.<sup>6</sup>

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The claims 1-6, 13-18, and 37-42 stand rejected under 35 U.S.C. §102(e) as being anticipated by Gatto et al. (U.S. 6,570,054).

The claims 7-12 and 19-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gatto et al. (U.S. 6,570,054).

The claims 1-6 and 10-18 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending U.S. Patent Application No. 10/659,967.

#### **VII. ARGUMENT**

**Rejection of Claims 1-6, 13-18, and 37-42 under 35 U.S.C. §102(e).**

Claims 1-6, 13-18, and 37-42 have been rejected under 35 U.S.C. § 102(e) as anticipated by Gatto et al. (U.S. 6,570,054).

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<sup>6</sup> Specification at pages 21-22, paragraph 52.

Claim 1 is directed to an absorbent article comprising a liner material having a bodyfacing surface. The bodyfacing surface has deposited thereon a lotion formation in an amount of from about 0.05 mg/cm<sup>2</sup> to about 100 mg/cm<sup>2</sup>. The lotion formulation comprises from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 0.1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer. The rheology enhancer is selected from the group consisting of dextrin palmitate, dextrin palmitate ethylhexanoate, stearyl inulin, combinations of di-functional alpha-olefins and styrene alone or in combination with mineral oil or petrolatum; combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, styrene/butadiene/styrene copolymers, styrene/isoprene/styrene copolymers, styrene-ethylene/butylene-styrene copolymers, styrene-ethylene/propylene-styrene copolymers, (styrene-butadiene)<sub>n</sub> polymers, (styrene-isoprene)<sub>n</sub> polymers, styrene-butadiene polymers, polyethylene polyisobutylenes, polyisobutenes, and combinations thereof.

Gatto et al. disclose an absorbent article having a stable skin care composition disposed on its skin-contacting surface. The skin care composition contains a substantially anhydrous, oil-based carrier comprising an emollient and, optionally, an immobilizing agent, at least one skin care ingredient, and at least one rheological agent. Suitable emollients, which are present in the skin care composition in an amount of from about 0% (by weight) to about 99.9% (by weight), can include, for

example, mineral oil, petrolatum, sucrose ester fatty acids, polyethylene glycol and derivatives thereof, fatty acid ester types, alkyl ethoxylate types, waxes, and mixtures thereof.<sup>7</sup> The immobilizing agents are present in the skin care composition in an amount of from about 5% (by weight) to about 95% (by weight) and can include C<sub>14</sub>-C<sub>60</sub> fatty alcohols, C<sub>14</sub>-C<sub>60</sub> fatty acids, C<sub>14</sub>-C<sub>60</sub> fatty alcohol ethoxylates, polyhydroxy fatty acid esters, polyhydroxy fatty acid amides, waxes such as carnauba, ozokerite, beeswax, candelilla, paraffin, ceresin, esparto, ouricuri, rezowax, isoparaffin, and combinations thereof.<sup>8</sup> Additionally, the skin care composition can comprise from about 0.1% (by weight) to about 25% (by weight) rheological agents selected from Type A rheological agents, Type B rheological agents, or mixtures thereof. Type A rheological agents can include fumed silica, organoclays, quaternium-18, hectorites, stearylalkonium hectorites, quaternium-18 bentonites, quaternium-18 benzalkonium bentonites, stearylalkonium bentonites, and their mixtures with at least one member selected from the group consisting of mineral oil, propylene carbonate, isopropyl palmitate, cyclomethicone, castor oil, lanolin, propylparaben, and C<sub>12</sub>-C<sub>15</sub> alkyl benzoate.<sup>9</sup> Type B rheological agents include, for example, polymeric rheological agents such as polymethacrylate polymers, polymethacrylate and styrene copolymers, which can optionally be crosslinked by a common crosslinking agent, polyethylene, polyethylene and acrylic acid or vinyl acetate copolymers, polyisobutylene, poly- $\alpha$ -olefins, bi

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<sup>7</sup> See 6,570,054 at column 16, lines 35-61.

<sup>8</sup> See *id.* at column 19, lines 60-65; column 20, lines 21-23; and column 22, lines 38-43.

<sup>9</sup> See *Id.* at column 14, lines 10-66.

or tri-component copolymers of styrene and hydrogenate ethylene, propylene, and butylene.<sup>10</sup>

Specifically, Gatto et al. fail to disclose the specific rheology enhancers as required by amended claim 1. These are significant requirements of claim 1 and are significant aspects of Applicants' invention as described in Applicants' specification.

In the Response to Arguments section of the Final Office action dated July 26, 2006, the Office notes that Gatto et al. discloses poly-alpha-olefins alone. Furthermore, in the Advisory Action mailed November 22, 2006, the Office states that as poly-alpha-olefins comprise a plurality of functional groups, the disclosure of poly-alpha-olefins fulfills the limitation of Applicants' di-functional alpha-olefins as required in claim 1. While Gatto et al. disclose poly-alpha-olefins in general, no where are the combinations of di-functional alpha-olefins and styrene or combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum as required in claim 1, taught or suggested in Gatto et al. Specifically, no wherein in the cited reference is isobutene taught or suggested. Additionally, the only mention of styrene in Gatto et al. is in column 15, lines 58-61, in which styrenes are present as part of various copolymers (e.g., copolymer of styrene and hydrogenated ethylene); as such, no where in Gatto et al. is it suggested to use styrene alone, or styrene alone in combination with di-functional alpha-olefins.

Furthermore, despite the Office's assertion that the generic disclosure of poly-alpha-olefins fulfills the

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<sup>10</sup> See *Id.* at column 15, lines 58-65.

limitations of di-functional alpha-olefins as required in Applicants' claim 1, Applicants respectfully assert that no where in the Gatto et al. reference is it taught or suggested to use the specific species of di-functional alpha-olefins in combination with styrene. Specifically, even if the Office is including styrene or isobutene generically in the disclosure of poly-alpha-olefins, Applicants respectfully assert that at best, Gatto et al. may have disclosed the genus of poly-alpha-olefins. Even assuming that the limited disclosure of the Gatto et al. reference discloses this genus, Applicants' claim 1, which includes the combinations of di-functional alpha-olefins and styrene or combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, defines a species of that genus nowhere disclosed in the reference. As stated in M.P.E.P. §2131.02, a genus does not anticipate a claim to a species within the genus, unless the species is clearly named or well delineated. Applicants assert that the broad generic disclosure of poly-alpha-olefins as set forth in Gatto et al. fails to clearly provide or delineate the combinations of di-functional alpha-olefins and styrene or combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, and, as such, cannot anticipate the rheology enhances required by Applicants' claim 1.

Furthermore, the Office states that the rheology enhancers of claim 1, as amended in Amendment B submitted May 2, 2006, are merely deleted from the instant claim because they are disclosed by Gatto et al., and not because they are disclosed in the instant specification as inferior or less preferred. As stated in M.P.E.P. §2131.04, secondary considerations, such as unexpected results or commercial success, are irrelevant to 35

U.S.C. §102 rejections. Specifically, as stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. As such, the mere fact that Gatto et al. fail to disclose the specific rheology enhancers of claim 1, and as such, fail to disclose each and every limitation of claim 1, is sufficient to determine that claim 1 is novel over the Gatto et al. reference.

Claims 2-6 and 13-18 depend directly from claim 1. As such, claims 2-6 and 13-18 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claim 37 is similar to claim 1 and further requires the rheology enhancer to be selected from the group consisting of hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.<sup>11</sup>

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<sup>11</sup> Applicants respectfully note that claims 37 and 41, as pending, no longer require mineral oil as a rheology enhancer. Specifically, claims 37 and 41 are directed to the known blends of Versagel, which as noted in the instant specification on page 21, paragraph 52 and also as shown in Table 4 of Example 1, are preferred rheology enhancers for use in Applicants' lotion formulation.

As Gatto et al. fail to disclose the specific rheology enhancers required by claim 37, Gatto et al. fail to disclose each and every limitation of claim 37. As such, claim 37 is novel over the Gatto et al. reference.

Claim 41 depends directly from claim 21, which is similar to claim 1 and further requires the lotion formulation to have a melt point viscosity of from about 5000 cPs to about 1,000,000 cPs and a process temperature viscosity of from about 50 cPs to about 50,000 cPs. As such, claim 41, which depends on claim 21 is patentable for the same reasons as claim 21, as well as for the additional elements it requires. Particularly, Gatto et al. fail to disclose each and every limitation of claim 21 as Gatto et al. fail to disclose the specific rheology enhances required by claim 21.

**Rejection of Claims 7-12 and 19-36 under 35 U.S.C. §102(e) or 35 U.S.C. §103(a).**

Claims 7-12 and 19-36 have been rejected under 35 U.S.C. §102(e) as anticipated by Gatto et al. (U.S. 6,570,054) or, in the alternative, under 35 U.S.C. §103(a) as obvious over Gatto et al.

Claims 7-12 and 19-20 depend directly on claim 1, which is discussed above. As such, claims 7-12 and 19-20 are patentable over Gatto et al. reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require. Specifically, Gatto et al. fail to disclose or suggest the specific rheology enhancers of claim 1.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet

three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under number (1) and/or (2) above, as the cited reference has not taught or suggested all of the claimed limitations of Applicants' claims 7-12 and 19-20, and there is no motivation or suggestion to modify the Gatto et al. reference to arrive at each and every limitation of Applicants' invention.

As noted above, Gatto et al. fail to disclose or suggest the specific rheology enhancers of claim 1. Furthermore, there is no motivation or suggestion to modify the Gatto et al. reference to arrive at the instantly claimed rheology enhancers. Specifically, nowhere is there motivation to substitute the rheology enhancers of claim 1 for one of the multiple rheological agents disclosed in Gatto et al.

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the Gatto et al. reference.<sup>12</sup> Notably, it would be

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<sup>12</sup> M.P.E.P. §2142 provides that in order to reach a proper determination under 35 U.S.C. §103(a), the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. Knowledge of Applicants' disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences." The tendency to resort to "hindsight" based upon Applicants' disclosure is often difficult to avoid due to the very nature of the examination process. However, as stated by the Federal Circuit, impermissible hindsight must be avoided and the legal



clear to one skilled in the art reading Gatto et al. that a skin care composition can include a rheology enhancer. There are, however, a myriad of rheology enhancers, many of which are used in skin care compositions. What is important is that there is no motivation or suggestion to use the rheology enhancers as claimed in amended claim 1, over any of the other enormous number of rheology enhancers described in the art.

Because there is no motivation or suggestion to modify the reference cited by the Office, claim 1 is patentable. As such, claims 7-12 and 19-20, which depend on claim 1 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claim 21, which is discussed above, is similar to claim 1, and as such, is patentable over the Gatto et al. reference for the same reasons as claim 1 set forth above. As such, claims 22-36, which depend on claim 21, are patentable for the same reasons as claim 21, as well as for the additional elements they require.

**Rejection of Claims 1-6 and 10-18 for Obviousness Type  
Double Patenting.**

Claims 1-6 and 10-18 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending U.S. Patent Application No. 10/659,967.

Applicants respectfully call the Office's attention to MPEP §804, I.B.1., which notes that if "provisional" obviousness-type

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conclusion must be reached on the basis of the facts gleaned from the prior art. Grain Processing Corp. v. American-Maize-Products, Co., 840 F.2d 902, 904 (Fed. Cir. 1988).

double patenting rejections in two applications are the only rejections remaining in those applications and both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The obviousness-type double patenting rejection in the base application can be withdrawn without a terminal disclaimer, while the obviousness-type double patenting rejection in the improvement application cannot be withdrawn without a terminal disclaimer. The present application and copending Application No. 10/659,967 were both filed on September 11, 2003. As this provisional rejection is not the only rejection in the present application, Applicants would like to delay responding to this rejection. If the Office has any questions please contact Mr. Christopher M. Goff at 314-231-5400.

Even if upon entry of this Letter To Patent And Trademark Office, the 102(e) and/or 103(a) rejections are overcome (which Applicants believe that they have) and the provisional obviousness-type double patenting rejection is the only rejection remaining in the present application, the present rejection is premature. As stated in MPEP §804, I.B.1., since it is not evident which of the pending applications the Office would determine to be the "base application," any action with regard to the present rejection is premature, until such a determination has been made.

VIII. Conclusion

The Office has failed to show that the Gatto, et al. reference anticipates claims 1-6, 13-18, 37, and 41 under 35 U.S.C. § 102(e) as Gatto, et al. fail to disclose the specific rheology enhancers as required in Applicants' claims. Additionally, a *prima facie* case of obviousness has not been established pursuant to 35 U.S.C. § 103, because the Office has failed to show a reference that teaches each and every element of Applicants' claims, and furthermore, sufficient motivation for the reference to be modified to arrive at each and every element of claims 7-12 and 19-36. Furthermore, the obviousness-type double patenting rejection is premature as this rejection is not the only rejection pending at the time of appeal and it is not evident which of the pending applications the Office would determine to be the "base application." For these reasons, and for those more fully stated above, Appellants respectfully request the Office's rejections be reversed and claims 1-37 and 41 be allowed.

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 19-1345.

Respectfully submitted,

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**CLAIMS APPENDIX**

1. (Previously Presented) An absorbent article comprising a liner material having a bodyfacing surface, the bodyfacing surface having deposited thereon a lotion formulation in an amount of from about 0.05 mg/cm<sup>2</sup> to about 100 mg/cm<sup>2</sup> and comprising from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 0.1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer, the rheology enhancer being selected from the group consisting of dextrin palmitate, dextrin palmitate ethylhexanoate, stearyl inulin, combinations of di-functional alpha-olefins and styrene alone or in combination with mineral oil or petrolatum, combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum, styrene/butadiene/styrene copolymers, styrene/isoprene/styrene copolymers, styrene-ethylene/butylene-styrene copolymers, styrene-ethylene/propylene-styrene copolymers, (styrene-butadiene)<sub>n</sub> polymers, (styrene-isoprene)<sub>n</sub> polymers, styrene-butadiene polymers, polyethylene polyisobutylenes, polyisobutenes, and combinations thereof.

2. (Original) The absorbent article as set forth in claim 1 wherein the emollient is present in an amount of from about 30% (by total weight of the formulation) to about 80% (by total weight of the formulation).

3. (Original) The absorbent article as set forth in claim 1 wherein the emollient is present in an amount of from about 60% (by total weight of the formulation) to about 80% (by total weight of the formulation).

4. (Original) The absorbent article as set forth in claim 1 wherein the structurant is present in an amount of from about 20% (by total weight of the formulation) to about 40% (by total weight of the formulation).

5. (Original) The absorbent article as set forth in claim 1 wherein the rheology enhancer is present in an amount of from about 0.5% (by total weight of the formulation) to about 30% (by total weight of the formulation).

6. (Original) The absorbent article as set forth in claim 1 wherein the rheology enhancer is present in an amount of from

about 1% (by total weight of the formulation) to about 25% (by total weight of the formulation).

7. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a melt point viscosity of from about 5000 cPs to about 1,000,000 cPs.

8. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a melt point viscosity of from about 50,000 cPs to about 800,000 cPs.

9. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a melt point viscosity of from about 100,000 cPs to about 500,000 cPs.

10. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a process temperature viscosity of from about 50 cPs to about 50,000 cPs.

11. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a process temperature viscosity of from about 75 cPs to about 10,000 cPs.

12. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a process temperature viscosity of from about 100 cPs to about 5,000 cPs.

13. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation further comprises an additional ingredient selected from the group consisting of antifoaming agents, antimicrobial actives, antiviral actives, humectants, antifungal actives, antiseptic actives; antioxidants, cosmetic astringents, drug astringents, biological additives, colorants, deodorants, film formers, fragrances, lubricants, natural moisturizing agents, skin conditioning agents, skin exfoliating agents, skin protectants, solvents, hydrophilic surfactants, and UV absorbers.

14. (Original) The absorbent article as set forth in claim 1 wherein emollient is selected from the group consisting of petrolatum, mineral oil, mineral jelly, isoparaffins, vegetable oils, avocado oil, borage oil, canola oil, castor oil, chamomile, coconut oil, corn oil, cottonseed oil, evening primrose oil, safflower oil, sunflower oil, soybean oil, sweet almond, lanolin, partially hydrogenated vegetable oils, polydimethylsiloxanes, methicone, cyclomethicone, dimethicone,

dimethiconol, and trimethicone, organo-siloxanes silicone elastomers, gums, resins, fatty acid esters glyceryl esters and derivatives, fatty acid ester ethoxylates, alkyl ethoxylates, C<sub>12</sub>-C<sub>28</sub> fatty alcohols, C<sub>12</sub>-C<sub>28</sub> fatty acids, C<sub>12</sub>-C<sub>28</sub> fatty alcohol ethers, Guerbet alcohols, Guerbet Acids, Guerbet Esters, and combinations thereof.

15. (Original) The absorbent article as set forth in claim 1 wherein the structurant has a melting point of from about 45°C to about 85°C.

16. (Original) The absorbent article as set forth in claim 1 wherein the structurant is selected from the group consisting of animal waxes, vegetable waxes, mineral waxes, synthetic waxes, polymers, bayberry wax, beeswax C<sub>30</sub> alkyl dimethicone, candelilla wax, carnauba, ceresin, cetyl esters, stearyl benzoate, behenyl benzoate, esparto, hydrogenated cottonseed oil, hydrogenated jojoba oil, hydrogenated jojoba wax, hydrogenated microcrystalline wax, hydrogenated rice bran wax, japan wax, jojoba buffer, jojoba esters, jojoba wax, lanolin wax, microcrystalline wax, mink wax, motan acid wax, motan wax, ouricury wax, ozokerite paraffin, PEG-6 beeswax, PEG-8 beeswax, rezowax, rice bran wax, shellac wax, spent grain wax, spermaceti



wax, steryl dimethicone, synthetic beeswax, synthetic candelilla wax, synthetic carnauba wax, synthetic japan wax, synthetic jojoba wax, C<sub>14</sub>-C<sub>28</sub> fatty alcohols, C<sub>14</sub>-C<sub>28</sub> fatty acids, polyethylene, ethylene vinyl acetate copolymers, ethylene-alpha olefin copolymers, ethylene homopolymers, C<sub>18</sub>-C<sub>45</sub> olefins, poly alpha olefins, hydrogenated vegetable oils, polyhydroxy fatty acid esters, polyhydroxy fatty acid amides, ethoxylated fatty alcohols and esters of C<sub>12</sub>-C<sub>28</sub> fatty acids, C<sub>12</sub>-C<sub>28</sub> fatty alcohols and combinations thereof.

17. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation is present in an amount of from about 1 mg/cm<sup>2</sup> to about 50 mg/cm<sup>2</sup>.

18. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation is present in an amount of from about 10 mg/cm<sup>2</sup> to about 40 mg/cm<sup>2</sup>.

19. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a penetration hardness of from about 40 to about 140.

20. (Original) The absorbent article as set forth in claim 1 wherein the lotion formulation has a penetration hardness of from about 60 to about 120.

21. (Previously Presented) An absorbent article comprising a liner material having a bodyfacing surface, the bodyfacing surface having deposited thereon a lotion formulation in an amount of from about  $0.05 \text{ mg/cm}^2$  to about  $100 \text{ mg/cm}^2$  and comprising from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer, wherein the lotion formulation has a melt point viscosity of from about 5000 cPs to about 1,000,000 cPs and a process temperature viscosity of from about 50 cPs to about 50,000 cPs, the rheology enhancer being selected from the group consisting of dextrin palmitate, dextrin palmitate ethylhexanoate, stearyl inulin, combinations of di-functional alpha-olefins and styrene alone or in combination with mineral oil and petrolatum, combinations of alpha-olefins and isobutene alone or in combination with mineral oil or petrolatum,

styrene/butadiene/styrene copolymers, styrene/isoprene/styrene copolymers, styrene-ethylene/butylene-styrene copolymers, styrene-ethylene/propylene-styrene copolymers, (styrene-butadiene)<sub>n</sub> polymers, (styrene-isoprene)<sub>n</sub> polymers, styrene-butadiene polymers, polyethylene polyisobutylenes, polyisobutenes, and combinations thereof.

22. (Original) The absorbent article as set forth in claim 21 wherein the emollient is present in an amount of from about 30% (by total weight of the formulation) to about 80% (by total weight of the formulation).

23. (Original) The absorbent article as set forth in claim 21 wherein the emollient is present in an amount of from about 60% (by total weight of the formulation) to about 80% (by total weight of the formulation).

24. (Original) The absorbent article as set forth in claim 21 wherein the structurant is present in an amount of from about 20% (by total weight of the formulation) to about 40% (by total weight of the formulation).

25. (Original) The absorbent article as set forth in claim 21 wherein the rheology enhancer is present in an amount of from about 0.5% (by total weight of the formulation) to about 30% (by total weight of the formulation).

26. (Original) The absorbent article as set forth in claim 21 wherein the rheology enhancer is present in an amount of from about 1% (by total weight of the formulation) to about 25% (by total weight of the formulation).

27. (Original) The absorbent article as set forth in claim 21 wherein the melt point viscosity is from about 50,000 cPs to about 800,000 cPs.

28. (Original) The absorbent article as set forth in claim 21 wherein the melt point viscosity is from about 100,000 cPs to about 500,000 cPs.

29. (Original) The absorbent article as set forth in claim 21 wherein the process temperature viscosity is from about 75 cPs to about 10,000 cPs.

30. (Original) The absorbent article as set forth in claim 21 wherein the process temperature viscosity is from about 100 cPs to about 5,000 cPs.

31. (Original) The absorbent article as set forth in claim 21 wherein emollient is selected from the group consisting of petrolatum, mineral oil, mineral jelly, isoparaffins, vegetable oils, avocado oil, borage oil, canola oil, castor oil, chamomile, coconut oil, corn oil, cottonseed oil, evening primrose oil, safflower oil, sunflower oil, soybean oil, sweet almond, lanolin, partially hydrogenated vegetable oils, polydimethylsiloxanes, methicone, cyclomethicone, dimethicone, dimethiconol, and trimethicone, organo-siloxanes silicone elastomers, gums, resins, fatty acid esters glyceryl esters and derivatives, fatty acid ester ethoxylates, alkyl ethoxylates, C<sub>12</sub>-C<sub>28</sub> fatty alcohols, C<sub>12</sub>-C<sub>28</sub> fatty acids, C<sub>12</sub>-C<sub>28</sub> fatty alcohol ethers, Guerbet alcohols, Guerbet Acids, Guerbet Esters, and combinations thereof.

32. (Original) The absorbent article as set forth in claim 21 wherein the structurant has a melting point of from about 45°C to about 85°C.

33. (Original) The absorbent article as set forth in claim 21 wherein the structurant is selected from the group consisting of animal waxes, vegetable waxes, mineral waxes, synthetic waxes, polymers, bayberry wax, beeswax C<sub>30</sub> alkyl dimethicone, candelilla wax, carnauba, ceresin, cetyl esters, stearyl benzoate, behenyl benzoate, esparto, hydrogenated cottonseed oil, hydrogenated jojoba oil, hydrogenated jojoba wax, hydrogenated microcrystalline wax, hydrogenated rice bran wax, japan wax, jojoba buffer, jojoba esters, jojoba wax, lanolin wax, microcrystalline wax, mink wax, motan acid wax, motan wax, ouricury wax, ozokerite paraffin, PEG-6 beeswax, PEG-8 beeswax, rezowax, rice bran wax, shellac wax, spent grain wax, spermaceti wax, steryl dimethicone, synthetic beeswax, synthetic candelilla wax, synthetic carnauba wax, synthetic japan wax, synthetic jojoba wax, C<sub>14</sub>-C<sub>28</sub> fatty alcohols, C<sub>14</sub>-C<sub>28</sub> fatty acids, polyethylene, ethylene vinyl acetate copolymers, ethylene-alpha olefin copolymers, ethylene homopolymers, C<sub>18</sub>-C<sub>45</sub> olefins, poly alpha olefins, hydrogenated vegetable oils, polyhydroxy fatty acid esters, polyhydroxy fatty acid amides, ethoxylated fatty alcohols and esters of C<sub>12</sub>-C<sub>28</sub> fatty acids, C<sub>12</sub>-C<sub>28</sub> fatty alcohols and combinations thereof.

34. (Original) The absorbent article as set forth in claim 21 wherein the lotion formulation further comprises an additional ingredient selected from the group consisting of antifoaming agents, antimicrobial actives, antiviral actives, humectants, antifungal actives, antiseptic actives; antioxidants, cosmetic astringents, drug astringents, biological additives, colorants, deodorants, film formers, fragrances, lubricants, natural moisturizing agents, skin conditioning agents, skin exfoliating agents, skin protectants, solvents, hydrophilic surfactants, and UV absorbers.

35. (Original) The absorbent article as set forth in claim 21 wherein the lotion formulation has a penetration hardness of from about 40 to about 140.

36. (Original) The absorbent article as set forth in claim 21 wherein the lotion formulation has a penetration hardness of from about 60 to about 120.

37. (Previously Presented) An absorbent article comprising a liner material having a bodyfacing surface, the bodyfacing surface having deposited thereon a lotion formulation in an amount of from about  $0.05 \text{ mg/cm}^2$  to about  $100 \text{ mg/cm}^2$  and

comprising from about 10% (by total weight of the formulation) to about 89% (by total weight of the formulation) of an emollient, from about 10% (by total weight of the formulation) to about 50% (by total weight of the formulation) of a structurant, and from about 0.1% (by total weight of the formulation) to about 40% (by total weight of the formulation) of a rheology enhancer selected from the group consisting of hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.

38. (Canceled).

39. (Canceled).

40. (Canceled).



41. (Previously Presented) The absorbent article as set forth in claim 21 wherein the rheology enhancer is selected from the group consisting of hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.

42. (Canceled).

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**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.